

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUSTIN JAMES HINZO,

Plaintiff,

vs.

No. CIV 10-0506 JB/CG

STATE OF N.M. DEPT. OF CORRECTIONS,
JOE WILLIAMS, GEORGE TAPIA, WEXFORD,
CORRECTIONAL MEDICAL SERVICES, DR. FNU ARNOLD,
DR. WILLIAM MIZELL, DR. TONY LNU, DR. DEBRA CLYDE,
DR. JOHN STOVER, DR. JOHN DOE (L.C.C.F.),
DR. JOHN DOE (C.N.M.C.F.), DR. JOHN DOE (W.N.M.C.F.),
CORRECTIONAL OFFICER JOHN (PRIMO) DOE,
WAYNE GALLEGOS, R.N. LIANE LOPEZ,
DEPUTY WARDEN JERRY ROARK,
LAWRANCE JARAMILLO WARDEN P.N.M., G.E.O.,

Defendants.

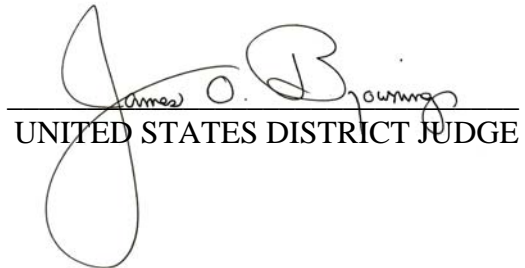
**MEMORANDUM OPINION AND ORDER ADOPTING MAGISTRATE
JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition, filed May 29, 2012 (Doc. 80)("PFRD"). In the PFRD, the Honorable Carmen E. Garza, United States Magistrate Judge, recommended that the Court deny the Motion by the Plaintiff Pro Se Asking the Court to Verify Three (3) Defendants that Were Not Named in the Judge's Memorandum Opinion and Order, and the Plaintiff Is Asking the Court to Review Specific Exhibits [sic] A-D then to Reconsider Parts of Its Memorandum Opinion and Order, filed March 9, 2012 (Doc. 63). See PFRD at 1. Judge Garza notified the parties that objections were due within fourteen days of service of the PFRD and that failure to file objections would preclude appellate review. See PFRD at 6. To date, no party has filed objections, and the time for doing so has passed.

The Court finds it necessary to clarify that Judge Garza incorrectly states that the Court dismissed all claims Plaintiff Justin James Hinzo has asserted against some of the Defendants,

specifically the following Defendants: (i) New Mexico Department of Corrections; (ii) George Tapia; (iii) Wayne Gallegos; and (iv) Jerry Roark. See PFRD at 1-2. Hinzo has asserted claims under both 42 U.S.C. § 1983 and the New Mexico Tort Claims Act, N.M.S.A.1978, §§ 41-4-1 to -30 (“NMTCA”), against all Defendants. Prisoner’s Civil Rights Complaint ¶ 2, at 1, filed January 4, 2011 (Doc. 30)(“Third Amended Complaint”)(“[T]he plaintiff is seeking the request [sic] relief at this point under ‘BOTH’ the N.M.T.C.A. and § 1983 civil rights” (emphasis in original)). The Court, in its Memorandum Opinion and Order, filed February 22, 2012 (Doc. 59)(“MOO”), addressed only the 42 U.S.C. § 1983 claims Hinzo has asserted. MOO at 1-3. The Court did not address any of Hinzo’s claims under the NMTCA. Thus, given that the Court has not addressed the NMTCA claims asserted against these Defendants, Judge Garza incorrectly states that the Court dismissed these Defendants from the case. Thus, the Court does not adopt the PFRD to the extent that it states that the Court has dismissed these Defendants from the case. The Court otherwise adopts the PFRD given that there are no objections to it.

IT IS ORDERED that: (i) the Magistrate Judge’s Proposed Findings and Recommended Disposition, filed May 29, 2012 (Doc. 80), are adopted in part; and (ii) the Motion by the Plaintiff Pro Se Asking the Court to Verify Three (3) Defendants that Were Not Named in the Judge’s Memorandum Opinion and Order, and the Plaintiff Is Asking the Court to Review Specific Exhibits [sic] A-D then to Reconsider Parts of Its Memorandum Opinion and Order, filed March 9, 2012 (Doc. 63), is denied.


UNITED STATES DISTRICT JUDGE

Parties and counsel:

Justin James Hinzo
Penitentiary of New Mexico
Santa Fe, New Mexico

Plaintiff pro se

Norman F. Weiss
Meena H. Allen
Simone, Roberts & Weiss
Albuquerque, New Mexico

-- and --

Peter Andrew Robertson
Office of General Counsel
New Mexico Department of Corrections
Santa Fe, New Mexico

Attorneys for Defendant State of New Mexico Department of Corrections

Edward Shepherd
Allen, Shepherd, Lewis, Syra & Chapman, P.A.
Albuquerque, New Mexico

-- and --

Norman F. Weiss
Meena H. Allen
Simone, Roberts & Weiss
Albuquerque, New Mexico

*Attorneys for Defendant George Tapia, Joe Williams, FNU Arnold, FNU Stover,
and Liane Lopez*

Edward Shepherd
Allen, Shepherd, Lewis, Syra & Chapman, P.A.
Albuquerque, New Mexico

Attorneys for Defendant Wexford Medical Services

Norman F. Weiss
Meena H. Allen
Simone, Roberts & Weiss
Albuquerque, New Mexico

Attorneys for Defendant Correctional Medical Services, Inc.